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In The

Supreme Court of the United States

October Term, 1996

INDIVIDUALS FOR RESPONSIBLE GOVERNMENT, INC., a non-profit Nevada corporation; JANICE BUSE; HILARY BURSON; JUNE LINK, individuals,

Petitioners,

vs.

WASHOE COUNTY, by and through the Board of County Commissioners of the County of Washoe; DIANNE CORNWALL, Chairman; LARRY BECK, Vice Chairman; GENE McDOWELL; STEVE BRADHURST; INDEPENDENT SANITATION CO., INC., a Nevada corporation,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Independent Sanitation Co., Inc. a Nevada Corporation, is wholly owned by its parent corporation, Caramella-Ballardini, Ltd., a Nevada Corporation, which is privately held. There are no subsidiaries of Respondent, Independent Sanitation Co., Inc.

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TO THE HONORABLE SUPREME COURT:

Washoe County, a political subdivision of the State of Nevada, and Independent Sanitation Co., Inc., Respondents, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, filed herein by Petitioners, Individuals For Responsible Government, Inc., a non-profit Nevada Corporation, Janice Buse, Hilary Burson, and June Link.

STATEMENT OF THE CASE

The Petitioners' Statement of the Case is a rambling discussion that does not place the issues decided by the Ninth Circuit in proper context. Respondents adopt, with slight modification, as their Statement of the Case, the facts and "background" as recited in the Ninth Circuit opinion as follows:

Washoe County, Nevada, like many other environmentally concerned communities, confronts a problem stemming from the illegal dumping of trash at sites other than approved dump sites. In response to this problem, the Board of County Commissioners ("Commissioners"), in November 1991, enacted Ordinance 838 to amend chapter 90 of the County Code. Ordinance 838 provides that the County and its authorized agents or contractees "have the exclusive right to gather, collect and haul garbage" in certain unincorporated areas in Washoe County. It also provides that "[e]very owner of real property who accumulates or causes the accumulation or garbage . . . must subscribe to the [services for] collection, hauling and disposal of garbage" provided by the county through Independent Sanitation Co., its exclusive franchisee.[1]

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1. By means of a contract dated April 14, 1992, the County granted (Cont'd)

In April, 1992, the Commissioners enacted Ordinance 848, which further amends chapter 90 of the County Code. Ordinance 848 creates an exemption from mandatory subscription to Independent Sanitation's garbage service for those owners and occupants of residential dwelling units who prefer to dispose of their own garbage. To qualify for such an exemption, these residents must haul their garbage "to an approved disposal site not less than every 7 calendar days. Independent Sanitation maintains the right to bill, on a quarterly basis, those who have been exempted. However, an exempt resident need not pay the bill provided that he submits to Independent Sanitation 'receipts or other proof showing that he has disposed of his garbage at an approve [sic] disposal site for each week within the previous quarter.' "

The enforcement of Ordinances 838 and 848 encountered difficulties. Prior to their passage, approximately 12,000 of Washoe County's 16,000 rural households subscribed to Independent Sanitation's garbage service, while approximately 4000 rural residents elected to dump their own trash. There are two legal dump sites in Washoe County, Nevada: the "Lockwood" landfill, located east of Reno, and the "Reno transfer station", located in the city of Reno. Independent Sanitation and its affiliate Reno Disposal Co. maintain and operate both dump sites.

[Petitioners make the contention that] despite these legal dumping options within Washoe County, prior to enactment of Ordinances 838 and 848 many county residents preferred to dispose of their household garbage in California because the

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(Cont'd)
Independent Sanitation an exclusive franchise to "operate all garbage collection and disposal services in the unincorporated ares" of Washoe County. The April 1992 contract amended an earlier, similar contract that had been in force since 1983.

dump sites in Susanville and Portola, California were more convenient and cost effective than the options available in Washoe County. [There is, however, scant evidence in the record to demonstrate that Petitioners or any significant number of customers in Washoe County actually used landfills in California. Respondents contend that the driving distance from Reno to the California communities having landfills would make this practice cost prohibitive. Respondents further contend that Petitioners' factual allegation of the use of California landfills is made solely for the purpose of advancing a Commerce Clause argument.]

In response to Ordinance 848, approximately 400 residents received exemptions from mandatory collection, allowing them to dispose of their own garbage. However, some who initially obtained exemptions later had their exemptions revoked for failure to provide receipts documenting their weekly disposal of garbage. As of August, 1993, Reno Disposal Co. had filed suit in small claims court against 72 Washoe County residents who had failed to pay for their garbage service. Those subjected to suit included at least one person who refused to pay after his exemption was revoked.

Petitioner June Link, among others, was angry about being brought into court and ordered to pay for a service that she neither wanted nor believed she needed. Petitioners Hilary Burson and Janice Buse also object to being forced to pay for a service they do not want. Hence, in July 1994, Petitioners filed suit in state court, seeking a declaratory judgment that ordinances 838 and 848 are unconstitutional. Respondents removed the case to federal district court and filed motions for summary judgment.

The district court granted Respondents' motions for summary judgment in October, 1995. Petitioners timely

appealed. The Ninth Circuit Court of Appeals in *Individuals for Responsible Government v. Washoe County*, 110 F.3d 699 (9th Cir. 1997) affirmed the district court. Petitioners filed a Writ of Certiorari with this Court.

REASONS FOR DENYING THE WRIT

SUMMARY

Petitioners make no attempt to meet the considerations governing review on certiorari as set forth in Rule 10, Rules of the Supreme Court (May 1, 1997). Petitioners do not demonstrate that the decision of the Ninth Circuit is in conflict with a decision of another United States Court of Appeals on the same subject matter; or that the Ninth Circuit decided a federal question in a way that conflicts with applicable decisions of this Court; or that the case presents an important question of federal law which has not been, but should be, settled by this Court. To the contrary, this Writ of Certiorari is based on arguments that the Ninth Circuit was in error on factual matters, and misapplied settled principles of state and federal law. Accordingly, the Writ should be denied.

I.

THE NINTH CIRCUIT CORRECTLY APPLIED THE DECISIONS OF THIS COURT IN FINDING THAT PETITIONERS LACKED STANDING TO RAISE A COMMERCE CLAUSE CHALLENGE.

The Ninth Circuit Court of Appeals held that petitioner, Individuals for Responsible Government, Inc., and the individual petitioners lacked standing to pursue their claims. Petitioners do not challenge this holding as to the individuals, but claim the holding was error as to the association. Petitioners cite *United*

Food and Commercial Workers v. Brown Group, __ U.S. __, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996), as support for their position. While paying lip service to the standing requirements for associations as outlined by the Court in that decision, petitioners ignore the fact that Individuals for Responsible Government, Inc. cannot meet them.

An association has standing to bring suit on behalf of its members in the following circumstances: (1) when the members themselves would have standing to sue in their own right; (2) the interests the association seeks to protect in the suit are germane to its purpose; and (3) the claims asserted and the relief requested do not require that the individual members participate in the lawsuit. *United Food and Commercial Workers v. Brown Group*, 116 S. Ct. at 1534; *see also Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 320 n.3, 97 S. Ct. 599, 602 n.3, 50 L. Ed. 2d 514 (1977). The record in this action is devoid of any evidence establishing that the members of Individuals for Responsible Government, Inc. have standing to sue in their own right or that the association's purpose is in any way related to the Commerce Clause claim they have raised.

Petitioners' only assertion regarding the members of Individuals for Responsible Government, Inc. is that they are persons who have attempted to assist Washoe County in the enforcement of anti-dumping ordinances. *Petition for Writ of Certiorari* at 9. From the remainder of petitioners' pleadings, it is clear that the claims of the association members would be no different than those asserted by the individual petitioners; that they are paying for garbage services they do not want. On this basis, the Ninth Circuit Court of Appeals found that the individual petitioners, while satisfying the constitutional requirements for standing, failed to satisfy the general prudential considerations for standing necessary to assert a Commerce Clause claim because their interests were "not even marginally

related to the purposes underlying the dormant Commerce Clause". 110 F.3d at 702-704. Petitioners do not challenge this finding.

One of the prudential requirements of standing is that a plaintiff's complaint must fall within the zone of interests which is protected or regulated by the statutory provision or constitutional guarantee in question. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475, 102 S. Ct. 752, 760, 70 L. Ed. 2d 700 (1982); *see also Air Courier Conference of America v. American Postal Workers Union*, 498 U.S. 517, 523-24, 111 S. Ct. 913, 918, 112 L. Ed. 2d 1125 (1991). The zone of interests test is more narrowly construed when a plaintiff's claim is brought pursuant to a constitutional guarantee than when it is brought under statute. *Clarke v. Securities Industry Association*, 479 U.S. 388, 400 n.16, 107 S. Ct. 750, 757 n.16, 93 L. Ed. 2d 757 (1987).

Like the individual petitioners' claims, the interests of the association members are only peripherally related to the purposes of the dormant Commerce Clause in limiting the power of the states to erect barriers to interstate trade. *See Dennis v. Higgins*, 498 U.S. 439, 446, 111 S. Ct. 865, 870, 112 L. Ed. 2d 969 (1991). Nothing in Washoe County's mandatory garbage collection ordinance requires that Independent Sanitation Co., Inc. dump the garbage it collects in Nevada, and petitioners' injury — having to pay for garbage service they do not want — would be the same if Washoe County's garbage were dumped in California or some other state instead. The ordinance does not impose barriers on interstate commerce which can be reached by petitioners' claims and those claims do not fall within the zone of interests to be protected by the dormant Commerce Clause. Thus, as its members lack standing to sue in their own right, Individuals for Responsible Government, Inc. cannot satisfy the first requirement of standing as an association.

The Eighth Circuit cited with approval and adopted the foregoing analysis of the Ninth Circuit on the zone of interests test in *Ben Oehrleins And Sons And Daughter, Inc, v. Hennepin County*, 115 F.3d 1372 (1997). The case was brought by haulers of solid waste who were required to use the designated facility under a flow control county ordinance. The Eighth Circuit held that although the haulers of the solid waste had standing to challenge the flow control measure because of the payment of higher fees, the hauler's customers and the general consumers did not have standing since their harm consisted only of higher garbage bills and this "harm alleged by the generator plaintiffs is narrow, personal, and strictly local." 115 F.3d at 1382. Accordingly, the Ninth Circuit's application and interpretation of the Commerce Clause is correct, and there is no conflict amoung the circuit courts to justify review by writ of certiorari.

Nor can Individuals for Responsible Government, Inc. satisfy the second prong of the analysis. The interests in interstate commerce which petitioners seek to protect by this lawsuit can hardly be described as germane to the association's purported purpose of controlling illegal dumping within Washoe County. From a review of the record of the proceedings below, it is clear that there is absolutely no nexus between the two. There is no evidence that illegal dumping in Washoe County is caused by interstate commerce or that interstate commerce is affected by the activities of Individuals for Responsible Government, Inc. in attempting to curb illegal dumping. They are entirely unrelated.

The Ninth Circuit Court of Appeals did not err in its determination that Individuals for Responsible Government, Inc. lacked standing to maintain this action. Its members lack standing to sue in their own right and the association's purpose is irrelevant to the Commerce Clause interests it seeks to protect. Accordingly, the Writ should be denied.

II.

PETITIONERS' ARGUMENTS THAT THE MANDATORY COLLECTION ORDINANCE AND THE FRANCHISE AGREEMENT WITH INDEPENDENT SANITATION VIOLATE THE COMMERCE CLAUSE ARE WITHOUT MERIT.

The Ninth Circuit did not reach the merits of Petitioners' Commerce Clause claim that Washoe County Ordinances 838 and 848 interferes with interstate commerce by preventing Petitioners from using landfills outside the State of Nevada. The Ninth Circuit held that Petitioners' lacked standing to make a Commerce Clause challenge, but in so doing observed that "we have serious reservations about the strength of this argument." 110 F.3d at 702.

Petitioner's make the same Commerce Clause arguments in their *Petition for Writ of Certiorari*. Petitioners tie together the mandatory collection ordinance with the exclusive franchise granted to Independent Sanitation. Petitioners then attempt to raise a Commerce Clause issue by reliance upon this Court's decision in *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994). This attempt fails.

In recent years, this Court has had occasion to address the subject of movement of solid waste in interstate commerce and the extent of local regulation that will be permitted under the Commerce Clause. Each case involved some aspect of impeding the free flow of solid waste across state lines. The state either attempted to place unreasonable restrictions on imports of solid waste from other states, *Chemical Waste Management v. Hunt*, 504 U.S. 334, 112 S. Ct. 2009, 119 L. Ed. 2d 121 (1992) (additional fee imposed on out-of-state waste); *Fort Gratiot Landfill v. Mich. Dept. of Nat. Res.*, 504 U.S. 353, 112 S. Ct.

2019, 119 L. Ed. 2d 139 (1992) (state statute permitting county to ban out-of-state solid waste held violated the Commerce Clause); *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U.S. 93, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994) (state statute imposed surcharge on out-of-state waste and disposed of within the state), or attempted to prevent the export of solid waste to competitive facilities across state lines. *Carbone*, ("flow control" ordinance directed solid waste to municipal transfer station when out-of-state competing facilities existed).

The Washoe County codes in question do not attempt to either direct the flow of solid waste or restrict its free movement. We are here dealing with garden variety solid waste ordinances enacted pursuant to the police power of a local community. No decision can be found that the typical solid waste collection practices of a community are a restraint on interstate commerce. If so, virtually the entire system of solid waste collection and disposal throughout the United States would be held unconstitutional. *See Kleenwell Biohazard Waste v. Nelson*, 48 F.3d 391, 395 (9th Cir. 1995) (*Citing Pike v. Bruce Church*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970) Ninth Circuit upholds a state licensing requirement for the transport of medical waste notwithstanding that such waste is transported across state lines).

The foregoing decisions of this Court cannot be read as a limitation on the traditional role of local government in dealing with solid waste under its police powers. The same Commerce Clause argument made by Petitioners was made in *U.S.A. Recycling, Inc. v. Town of Babylon*, 66 F.3d 1272 (2nd Cir. 1995). In *Town of Babylon*, the ordinance under attack provided that the local community would take over all solid waste collection and entered into an exclusive franchise with a private contractor for that service. The challenge was made that *Carbone* invalidate

such an arrangement. The Second Circuit did not read the decisions of this Court as changing the traditional role of local government in dealing with solid waste issues under its police powers as firmly established by this Court in *California Reduction Co. v. Sanitary reduction Works*, 199 U.S. 366, 26 S. Ct. 100, 50 L. Ed. 204 (1905) and *Gardner v. Michigan*, 199 U.S. 325, 26 S. Ct. 106, 50 L. Ed. 212 (1905). 66 F.3d at 1292-1293.

Similar to the ordinances in *Town of Babylon*, the State of Nevada, has granted counties the authority to "displace or limit competition" in the area of the "collection and disposal of garbage and other waste." NRS 244.187(3). This grant of authority includes awarding an "exclusive franchise" to provide such services. NRS §§ 244.187 and 244.188. *See Ambulance Serv. of Reno, Inc. v. Nevada Ambulance Servs., Inc.*, 819 F.2d 910 (9th Cir. 1987) (upheld the right of Washoe County to enter into an exclusive franchise for ambulance service under NRS 244.187).

Furthermore, it is settled state law that in the exercise of its police power, local governments usually reserve to itself the service of providing collection and disposal of solid waste and the usual practice is to exclude all others from providing those services. This is accomplished by entering into an exclusive franchise arrangement. *See generally* 7 McQuillin, *Municipal Corporations* (3d ed.), § 24.251, p. 140. The state courts have been unanimous in upholding exclusive franchise arrangements for the collection and disposal of solid waste under the police power of the state. *See, e.g., Peninsula Sanitation v. City of Manistique*, 526 N.W. 2d 607 (Mich. 1995); *City of Spokane v. Carlson*, 436 P.2d 454 (Wash. 1968); *Browning-Ferris, Inc. v. City of Leon Valley*, 590 S.W. 2d 729 (Tex. 1979); representative of the federal authorities to the same effect see *L & H Sanitation v. Lake City Sanitation*, 769 F.2d 517 (8th Cir. 1985).

Petitioners also make a Commerce Clause argument based upon Washoe County's mandatory solid waste collection ordinance. Again, local ordinances requiring the mandatory collection of garbage and solid waste is based upon settled state law and does not deserve review by this Court. The unanimous cases upholding similar mandatory solid waste collection ordinances are discussed in Part III of this *Brief in Opposition* and are fully applicable there.

Accordingly, this Court can properly conclude that Petitioners' Commerce Clause arguments based on Washoe County's mandatory collection ordinance and its grant of an exclusive franchise are without merit. Accordingly, these arguments advance no justification to grant the Writ.

III.

THE NINTH CIRCUIT CORRECTLY CONCLUDED THAT THE MANDATORY RECYCLING FEE DID NOT VIOLATE THE TAKINGS CLAUSE.

Respondent, Independent Sanitation, under its exclusive franchise agreement with Washoe County, provides a curbside recycling service for all residential customers. Independent Sanitation bills its customers $1.25 per month for the recycling service, even if they never use the service. Petitioners argue they have a property right in the recyclable materials and that the curbside recycling program constitutes a taking of private property for public use without just compensation, in violation of the Takings Clause of the U.S. Constitution.

The Ninth Circuit found this argument to be without merit. The Ninth Circuit first observed that the curbside service cannot be considered as a "taking" because residents have no obligation to utilize that service. Residents can legally choose to deliver

their recyclable materials to recycling centers, or not to recycle at all. Further, the Ninth Circuit correctly held that the $1.25 per month service charge is not a taking because it is equivalent to a general property tax targeted to fund a specific county-wide service. This is the same as a school tax that property owners are required to pay, even though their children do not attend public schools.

Completely overlooked by Petitioners is the fact that a curbside recycling program is not a discretionary matter for either Washoe County or Independent Sanitation. Providing curbside recycling is a requirement of Nevada state law. The Nevada Legislature has determined that it shall be the policy of the state that large counties "*shall* make available" a program for "separation at the source of recyclable material from other solid waste originating from the residential premises". NRS 444A.049(1). The word "shall" makes this a mandatory requirement. *See* NRS 0.025(1)(d) ("'Shall' imposes a duty to act") Washoe County has merely complied with state law by requiring Independent Sanitation to provide the curbside recycling service. Petitioners made no challenge in the District Court, nor on appeal to the Ninth Circuit, that the Nevada statute, NRS 444A.049(1), was unconstitutional.

The decision of the Ninth Circuit upholding the fee charged by Independent Sanitation for the curbside recycling program rests on settled state law. The authorities upholding a fee for mandatory garbage collection are fully applicable to the recycling fee charged by Independent Sanitation in providing the recycling service. Representative of this line of cases is the California Supreme Court decision in *City of Glendale v. Trondsen*, 308 P.2d 1 (Calif. 1957). In *City of Glendale*, the argument was made that the charge for garbage collection service could not be collected because the service was never used. The Court answered this argument by noting that mandatory garbage

collection was analogous to the requirement that all residents connect with the city sewer system. This practice has been universally upheld by the courts against any challenge that existing sewer facilities on the premises were adequate. The same analysis applies to other public utilities such as connecting to the City's water system. 308 P.2d at 5.

The applicable rule of *City of Glendale* is that mandatory solid waste collection is a *service* which applies to all residents uniformly. It is not a valid objection under the police power that the service is not used or not wanted. *See City of Portsmouth v. McGraw*, 488 N.E.2d 472, 474 (Ohio 1986) (garbage collection fee levied on every family with "living quarters" or in which "garbage or refuse is created". The complaining party admitted having living quarters, but argued that she never used the service, relying on friends and neighbors to dispose of solid waste accumulations); *Zerr v. Tilton*, 581 P.2d 364, 371 (Kan. 1978) ("The fact that plaintiffs voluntarily chose not to avail themselves of the service is not susceptible of the construction that they are not *receiving* the service" (emphasis added); *Kootenai County Property Assn. v. Kootenai County*, 769 P.2d 553, 555 (Idaho 1989) (mandatory service upheld).

Accordingly, in concluding that the curbside recycling program and service fee were not "takings" under the Taking Clause, the Ninth Circuit was consistent with well-settled state and federal law and no issue is presented for review by way of a writ of certiorari.

IV.

THE COURT OF APPEALS CORRECTLY FOUND THAT WASHOE COUNTY'S MANDATORY GARBAGE ORDINANCE WAS WITHIN ITS POLICE POWERS PURSUANT TO SECTION 244.187 OF THE NEVADA REVISED STATUTES.

Petitioners argue that the Ninth Circuit Court of Appeals overlooked facts showing that Washoe County's enactment of its mandatory garbage ordinance was in excess of the powers statutorily granted it by section 244.187 of the Nevada Revised Statutes. This argument is disingenuous, as petitioners have confused Washoe County's authority to mandate garbage collection with its authority to grant a franchise to a garbage collector.

It is beyond dispute that the government's enactment of laws pertaining to garbage and rubbish control is a proper exercise of the police power. *California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306, 316-17, 26 S. Ct. 100, 102, 50 L. Ed. 204 (1905). It is pursuant to this inherent police power and the statutory authority granted municipalities by Nevada's solid waste statutes that Washoe County has mandated the collection of garbage from residents. *See* Nev. Rev. Stat. §§ 444.510-444.530 (Appendix A, pp. 2a-3a). Thus, it is pursuant to these authorities that the validity of Washoe County's ordinance must be tested. As petitioners concede, the Ninth Circuit Court of Appeals correctly held that Washoe County's mandatory garbage ordinance should be upheld if it was within the scope of the authority granted the county by the state, aimed at serving a legitimate public purpose and was rationally related to that purpose. 110 F.3d at 704. *See also Sligh v. Kirkwood*, 237 U.S. 52, 61, 35 S. Ct. 501, 503, 59 L. Ed. 835 (1915).

It is at this point that petitioners' confusion takes over, however, and they go on to argue that the enactment of the ordinance does not meet the standards set forth in the statute which allows counties to grant garbage collection franchises. A board of county commissioners in Nevada is authorized to displace or limit competition for the collection and disposal of garbage in order to provide adequate, economical and efficient services to county inhabitants and to promote the welfare of those inhabitants. Nev. Rev. Stat. § 244.187(3). The statute has no application to Washoe County's authority to mandate garbage collection, but only speaks to one of the ways the county may choose to have that collection accomplished.

Even if petitioners' claims regarding section 244.187 of the Nevada Revised Statutes could be said to have some applicability to the enactment of the mandatory garbage ordinance, their arguments would be unavailing nonetheless. It is clear from the absence of citation to the record of this action that petitioners did not produce any evidence below which would show that mandatory garbage collection in Washoe County is not adequate, economical and efficient or that it does not promote the welfare of the county's inhabitants. Petitioners' claim of error in regard to Washoe County's exercise of its police power is without substance or support, in fact or in law. Therefore, the Petitioners present no basis for review by way of a writ of certiorari.

CONCLUSION

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari for the reason that this case presents no issue appropriate for the Court's review insofar as (1) the Ninth Circuit decision is based on settled law as set forth in the opinions of this Court; and (2) no important question of federal law is raised, nor conflict among the circuits which requires adjudication or clarification.

Respectfully submitted,

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APPENDIX A — RELEVANT STATUTES

NEVADA REVISED STATUTES

244.187 Displacement or limitation of competition: Services. A Board of county commissioners may, to provide adequate, economical and efficient services to the inhabitants of the county and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas:

1. Ambulance service.

2. Taxicabs and other public transportation, unless regulated in that county by an agency of the state.

3. Collection and disposal of garbage and other waste.

4. Operations at an airport, including but not limited to the leasing of motor vehicles and the licensing of concession stands, but excluding police protection and fire protection.

5. Water and sewage treatment, unless regulated in that county by an agency of the state.

6. Concessions on, over or under property owned or leased by the county.

7. Operation of landfills.

8. Construction and maintenance of benches and shelters for passengers of public mass transportation.

Appendix A

444.510 Municipal solid waste management systems: Development, revision and approval of plans; cooperative agreements.

1. The governing body of every municipality or district board of health created pursuant to NRS 439.370 shall develop a plan to provide for a solid waste management system which adequately provides for the management and disposal of solid waste within the boundaries of the municipality or within the area to be served by the system, whether generated within or outside of the boundaries of the area.

2. The plan may include ordinances adopted pursuant to NRS 444.520 and 444.530.

3. Such a governing body may enter into agreements with governing bodies of other municipalities, or with any person, or with a combination thereof, to carry out or develop portions of the plan provided for in subsection 1, or both, and to provide a solid waste management system, or any part thereof.

4. Any plan developed by the governing body of a municipality or district board of health created pursuant to NRS 439.370 must be submitted to the state department of conservation and natural resources for approval according to a schedule established by the state environmental commission. No action may be taken by that governing body or district board of health until the plan has been approved. The department shall determine the adequacy of the plan within 90 days after receiving the plan. If the department does not respond to the plan within 90 days, the plan shall be deemed approved and becomes effective immediately.

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5. An approved plan remains in effect until the plan is revised and the revised plan is approved. A plan must not conflict with the statewide plan adopted by the state environmental commission pursuant to NRS 444.570. Plans must be revised to reflect proposed changes in the solid waste management system, and changes in applicable regulations.

444.520 Municipal solid waste management systems: Additional fees and charges.

1. The governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of other or additional fees and charges and require such licenses as may be appropriate and necessary to meet the requirements of NRS 444.460 to 444.610, inclusive.

2. The fees authorized by this section are not subject to the limit on the maximum allowable revenue from fees established pursuant to NRS 354.5989.

444.530 Municipal solid waste management systems: Regulations for operation. The governing body of a municipality having a solid waste management system within its boundaries shall, by ordinance, establish regulations for the operation of such system. No such ordinance shall be in conflict with any regulation adopted by the state environmental commission.